



Magistrate Judge Clifford J. Proud

Case Management Procedures

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General Information

General Matters

The Standards for Professional Conduct Within the Seventh Federal Judicial Circuit are hereby adopted as the governing standard for matters pending before Magistrate Judge Proud. Pro se litigants will abide by the directions therein to counsel. The standards are published in the Practitioner's Handbook published by the Seventh Circuit Court of Appeals. Internet access to the standards may be obtained at the following URL: www.ca7.uscourts.gov/conduct.pdf

The filing of all pleadings shall be with the Clerk's Office on the first floor of courthouse and not in chambers. However, alert chambers when filing pleadings less than one week before a scheduled hearing or trial. Once a case is in trial, all filings shall be with the Courtroom Deputy Clerk in the courtroom. Otherwise, attempts to file matters directly in chambers will be refused. Courtesy copies are discouraged, unless they relate to a matter to be heard in court within seven days or an imminent deadline.

All litigants and attorneys should be aware that something filed with the Clerk's Office will not be conveyed to chambers until docketed, a process which often takes a full business week. Consequently, if asking the court to extend the deadline to file a pleading, the motion should take into account such a time delay. For example, if the motion asks specifically for a four-day extension of time, it likely will not reach Judge Proud's desk until after that four days has passed. Consequently, the request cannot be granted unless the pleading has in the meantime been deposited with the Clerk's Office allowing for an order to file *instanter*. The better practice would be to alert chambers of its filing, so we can direct expedited handling, or make the request open-ended, while advising the judge how much additional time is needed and depositing the pleading with the Clerk within the time requested. If depositing the pleading with the Clerk, prior to leave being granted, supply a proposed order to chambers directly which provides for leave to file *instanter*.

Judge Proud will hear oral argument on motions in exceptional circumstances only upon his determination of such need. Parties who wish oral argument should make the request in writing and state the reason the exception exists in the motion at issue. If Judge Proud directs that oral argument should proceed, parties will be advised by written or telephone notice and further advised if a time limit on argument has been set. Parties should expect time limits to be strictly enforced.

Media Relations

The media should expect this chambers and every member of it to comply with Canon 3(A)(6):

A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

Communications with Chambers

When the need arises to communicate with chambers, contact the law clerk assigned to the case. If you don't know the law clerks assigned to your case call the chambers main line and ask for the appropriate person.

Direct communication with chambers should only be for urgent matters wherein the usual filing process will cause undue delay. Likewise, such contact shall only be with the knowledge and consent of or in concert with opposing counsel or pro se litigants. Every litigant and all attorneys are expected to respect the rules against inappropriate ex parte communications with all members of chambers. The typical effort to violate this rule occurs when persons attempt to influence law clerks in some action usually through the vehicle of inquiring about the law clerk's opinion regarding how he or she expects the Court to rule on a pending matter while simultaneously advocating a position. Appropriate communications with law clerks include scheduling matters (in the absence of the Courtroom Deputy and with consent of opposing counsel or parties) and the need for information regarding chambers-specific procedures and policies not clearly established herein. Judge Proud requires adherence to the Local Rules except in rare cases, of which he will directly advise parties. Therefore, questions about Local Rules and procedures covered by such Rules should be addressed by reading the Rules and not directed to law clerks.

Facilities

The following technological devices for evidence presentation or video display are available: ELMO, projection screen and dual television projections. Parties desiring to utilize such equipment must notify the Court in advance.

Counsel should advise clients and witnesses to avoid contact with the jury and to avoid lingering in the area outside of the courtroom since the entrance to the jury room is just outside the courtroom entrance.

Court Hours and Promptness

Promptness is expected of everyone involved in the proceedings before Court. The Courtroom Deputy should be advised of any delay to be occasioned by one's tardiness.

During trial days, Court will be in session from 9:00 until 4:30, with morning and afternoon breaks and an hour and a quarter for lunch. Judge Proud tries to break between noon and 1:15 for lunch. Counsel's diligence in keeping track of the time will greatly assist the Court in avoiding an interruption in the testimony at illogical points. However, counsel should not unilaterally stop at a point not reasonably close to the above times and announce he or she is "ready to break now." The Court will determine when to take a break after learning from counsel the anticipated time of examination remaining.

Pretrial Information

Rule 16 Conferences

The parties are required to meet within twenty-one (21) days after the first appearance of a defendant (and at least twenty-one (21) days before any scheduling conference set by the Court) to discuss the issues in the case and potential discovery needs in accordance with Rule 26(f) of the Federal Rules of Civil Procedure. Within seven (7) days after the meeting, they must submit Joint Report of Parties and Proposed Scheduling and Discovery Order ("JROP") to the Court. This form may be downloaded by clicking [here](#). All parties are jointly responsible for arranging and participating in this meeting and for submitting the JROP. If it is a Class Action, click [here](#) for the form.

The Court sets a Rule 16 Conference within forty (40) days after the first appearance of a defendant, or with respect to removed and transferred cases, within forty (40) days of the removal or transfer to this District. The Rule 16 conference will be canceled upon the receipt of the JROP.

The Court is mandated to enter a scheduling order and, therefore, very rarely continues Rule 16 conferences. Rule 16 conferences will not be continued because of the filing of a motion to dismiss or to remand. The Court encourages cooperation between the parties in preparing and filing the JROP. A lack of cooperation does not relieve a party from complying with the requirement to file a JROP. If a party needs to file a separate JROP, a memorandum should be attached to the JROP explaining why a joint plan cannot be filed. The Rule 16 conference will be held as scheduled, and any problems the parties have in working together will be addressed.

Protective Orders

Parties seeking Protective Orders must adhere to the dictates of the Seventh Circuit's decisions in *Union Oil Co. of California v. Leavell*, 220 F.3d 562 (7th Cir. 2000) and *Citizens First National Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943 (7th Cir. 1999). At all times, the Court must protect the public's interest in openness, and the presumption lies in favor of openness and against secrecy. A particularized showing of good cause must be made for protecting specific materials and information.

Settlement Conferences

Settlement conference dates are usually initially set by the Court as part of the Scheduling and Discovery Order. Typically, settlement conferences are set at 9:30 a.m. Because it is impossible to gauge in advance how long a settlement conference will last, attorneys and parties attending the settlement conferences should keep the entire day open.

There are few rules attending these conferences, but they are firm and will not be deviated from except in very unusual circumstances. They are:

*Lead counsel or secondary counsel with a working knowledge of the case must attend.

*The parties must attend. A named individual defendant need not attend if covered by liability insurance. In that case, an insurance representative with full authority to negotiate and settle the case must be here. This is an area which causes trouble. Frequently, an insurance representative appears with authority to a certain dollar limit. Most of the time, that authority is insufficient to do the job. It then becomes necessary to track down by telephone the person who really has the authority so that negotiations can be

completed. This is disruptive and inefficient. A good rule of thumb for defendants trying to select a proper representative is to bring a person who can agree to any sum demanded by plaintiff without resort to the telephone.

*If during preparation for a settlement conference a party determines that negotiations will be futile, then that party should convey that information to the Court in the party's settlement statement or a call to the Court. Defendants who appear with nothing but nuisance money may find themselves paying the cost of plaintiff(s) and plaintiff(s)' attorneys to attend.

Click here for [Settlement Statement of Attorney](#).

Settlement statements may be submitted to Judge Proud via his official proposed document e-mail address at CJPpd@ilsd.uscourts.gov, regular mail, or by fax (618-482-9010).

Final Pretrial Conference

Judge Proud utilizes the Final Pretrial Order set out in the [Local Rules](#). Forms may be obtained from the Clerk's Office for a fee of \$3.00 or may be downloaded by clicking [here](#). Click [here](#) for instructions in how to prepare the Final Pretrial Order.

The Court expects faithful adherence to the rule requiring cooperation between the parties for completion of the Final Pretrial Order.

Parties are expected to have their exhibit lists attached to the proposed order at the time of the conference and already evaluated by opposing parties to determine issues as to admissibility.

Should counsel anticipate any novel or particularly difficult legal issues which will require extensive arguments outside the hearing of the jury, the Court shall be so advised at the final pretrial conference. The Court will then determine a time and forum for resolution of the issues involved and whether counsel will be required to brief the issues and when.

Hearing and Trial Information

Courtroom Decorum

- Everyone who is able to do so is expected to stand when the judge or jury enters the courtroom.
- If counsel, clients or witnesses have a cellular phone, pager or audible watch, make sure it is silenced before it is brought into the courtroom.
- While Judge Proud realizes that some lawyers believe that incivility is just part of the litigation process, he does not share that belief. Judge Proud is courteous to all who enter his chambers and courtroom and will expect and tolerate no less from anyone else.

General Trial Procedures

Judge Proud views one of his more important roles to be the protector of the juror's time and reducing the imposition on their lives to every extent possible. Every trial participant must be cognizant of the impact on the jurors of anything which could cause them to waste their time by not observing trial proceedings. Consequently, the Court demands that everyone accomplish anything which might cause a delay prior to the jurors arriving. Judge Proud will make every effort to explain unavoidable delay to the jurors in terms that will not reflect on either party. A pattern of delay that is avoidable may result in the jurors be advised who caused the delay.

It is appropriate to stand when addressing the Court and witnesses. Likewise, every trial participant must be sure she/he is speaking loudly enough for the judge, the Court reporter and the jury to hear. This need will require the elevated volume of one's voice or use of a microphone. An interrogator should make certain her or his witness is speaking closely to and directly into the microphone.

Permission to approach a witness need not be requested unless an integral part of one's own trial strategy. Likewise, remaining at the podium is not required as long as one is certain that everyone can adequately hear. Remember it is your record that you are trying to establish and it is your evidence you are eliciting, so let everyone have the benefit of it here and in Chicago.

All remarks shall be addressed to the Court to avoid colloquy or argument between trial counsel, which is prohibited. Outside of voir dire, jurors shall never be individually addressed or used for illustration of any purpose.

The Court does not tolerate non-verbal communication from litigants. Unfortunately, a litigant who is disenchanted with testimony or the rulings of the Court may communicate his dissatisfaction by using facial expressions. Aside from showing disrespect for the proceeding at hand, such communication is a source of consternation for jurors. At the worst, it could be interpreted, by the Court or jury, as a means of influencing the jury outside the scope of the normal rules of courtroom engagement. Counsel should advise their clients to refrain from such activity. Should the Court discern a pattern of such activity, it will issue a warning to counsel. Further examples of this behavior may result in an admonishment directly to the litigant or, if sufficiently blatant and prejudicial, expulsion of the offending litigant from the courtroom.

Counsel shall insure that parties and witnesses do not mingle with potential jurors or trial jurors. Prior to trial, the venire panel will be located in the jury assembly room and instructed to report directly to the jury deliberation room adjacent to the courtroom once they have been selected for trial. However, mingling is always a potential when the jurors arrive at and leave the courthouse or go to the smoking area.

Venire and Voir Dire

Prior to seating the venire panel, each potential juror is required to fill out a questionnaire, a copy of which will be given to each party. You can obtain a blank copy of the questionnaire upon request of chambers or the jury administrator. Likewise, a copy can be downloaded by linking to the juror questionnaire.

The Court will conduct the voir dire. Following the Court's voir dire, each party shall be given the opportunity to submit additional questions. If either side would like the Court to ask particular questions of the panel, such questions should be submitted to the Court prior to the seating of the panel, with a copy provided the other parties.

At the conclusion of all questions, the panel shall be excused from the room. Thereafter, the Court will entertain any cause challenges, followed by peremptory challenges. Challenges shall be exercised individually in alternate fashion. All jurors in civil cases remaining at the beginning of trial shall remain on the jury throughout deliberation unless excused for cause.

Opening Statement and Closing Argument

The Court will determine the time counsel will be given for opening statement. Any exhibits which counsel wish to use during the opening must first be shown to opposing parties and a determination of whether there is agreement for its use. In the event of disagreement, the Court will only allow the use of the exhibits for which admissibility can be determined promptly and without causing a delay in the start of the trial. Electronic demonstrative aids that do not involve exhibits to be introduced during trial, such as Power Point, must be shown to opposing parties and the Court for evaluation of its reasonableness.

Counsel should maintain a reasonable distance from the jury, but are not required to confine themselves to the podium. However, if the jury or the court reporter have difficulty hearing counsel, the podium and direct use of the microphone will be required.

The Court will determine the appropriate time to be spent in closing arguments. The Courtroom Deputy will give warnings as requested. Any demonstrative aids that are not admitted exhibits must be shown to the opposing side and the Court for evaluation of reasonableness before use.

Examination of Witnesses

Counsel are expected to plan trial time so as to prevent delays occasioned by a witness's absence. Witnesses should be present and ready to testify when called. Unless the Rule on Witnesses has been invoked, one's next witness should be in the courtroom and ready to take the stand when announced. Counsel should not depend on their agreement to suspend testimony for a period of time as an accommodation to witnesses without consulting the Court.

Objections and Questions

In objecting, counsel should simply advise the Court of the grounds for the objection, without argument or speaking beyond the bare grounds. Should the Court desire argument relative thereto it will so indicate.

Exhibits

Exhibits should be pre-marked. Use individual arabic numerals for each exhibit, without relying on an alphabetic denomination. Designate multiple page exhibits with one exhibit number, using page numbers for further identification. Do not group sets of multiple photographs. Give each photograph a separate exhibit number.

If an exhibit must be marked during trial, the exhibit shall be handed to the Courtroom Deputy clerk for marking.

In order to avoid confusion, counsel should move for admission of an exhibit contemporaneously with the particular testimony establishing its admissibility. Counsel should maintain a list of admitted exhibits for comparison with the clerk's when a question arises regarding admissibility or whether an exhibit is to be sent to the jury.

Depositions

Counsel should confer prior to trial to work out which objections in depositions can be resolved without the Court's intervention. To the extent that some agreement can be achieved, all copies of the deposition, including the Court's original, should be marked to strike testimony that will not be read to the jury. If objections remain that need ruling upon by the Court, counsel shall so advise the Court well in advance of the time the deposition is to be shown or read to the jury.

Jury Instructions

The parties must submit jury instructions by the deadline set at the Final Pretrial Conference. Instructions shall be submitted with a completed jury instruction chart, on the form provided by this Court at the Final Pretrial Conference. The parties shall tender to the Court an original and one copy of each proposed instruction. The originals shall be on 8½" x 11" plain white paper without any designation or number. The copies shall be numbered, shall indicate which party tenders them, shall contain a source (e.g., "IPI 2.01"), and shall include a legend indicating whether the instruction was:

____ withdrawn ____ given ____ given as modified ____ refused.

Instructions also should be submitted to the Court on disk in Word format. Counsel shall provide copies of all proposed instructions to opposing counsel at or before the time they are tendered to the Court.

Near the conclusion of the evidence the Court will hold an instruction conference. However, prior thereto and at a time that will not delay the Court's conference or the trial, counsel shall meet and confer for the purpose of determining which instructions shall be given by agreement. During the initial portion of the instruction conference, while off the record, the Court will inquire as to the areas of agreement and dispute. For those instructions in dispute, the Court will listen to argument and then decide which instruction will be given. After determining the complete set of instructions to be read to the jury, the Court will, on the record, announce formally which instructions it intends to give. Each party will be given an opportunity to argue its position, and the Court will announce whether its prior decision stands or whether it has been persuaded to change its ruling.

Jurors

Every effort must be made to avoid contact with jurors or potential jurors. Jurors must utilize public hallways and elevators. Counsel, in addition to being constantly aware of the potential for the presence of jurors, must advise clients and witnesses not to speak about the case in the common areas of the building. Any inadvertent contact must be reported to Judge Proud or his Court Security Officer immediately.

Neither counsel nor parties shall be allowed to retain any of the computer printouts or questionnaires with juror demographic information.

Miscellaneous

Transcripts

Parties who wish to receive daily transcript of testimony must make their own arrangements. Contact Keefe Reporting at 618-277-0190 for further information. Requests for transcripts following trial also must be made directly to the court reporter. It is helpful if, before trial begins, all parties provide to the court reporter a list of all words, terms, technical terminology, proper names, acronyms, and case citations that would not be found in a generic dictionary.

Conflicts of Interest

A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including where he has a financial interest in the subject matter in controversy or a disqualifying relationship with a party to the proceeding.

Any non-governmental corporate party to a proceeding must file a statement identifying any parent corporations and any publicly-held corporation that owns 10% or more of its shares. The case caption must include all parties so that Judge Proud may assess whether there is cause for disqualification.

Remittal of Disqualification

A judge disqualified by the terms of Canon 3C(1), except in the circumstances specifically set out in subsections (a) through (e), may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Notice Concerning Waiver of Judicial Disqualification

FROM:
The Clerk
Date _____
TO:
XXXX (Counsel)
XXXX (Counsel)
XXXX
RE:
ABC v. DEF, Case No.

Canon 3D of the Code of Conduct provides (with exceptions not pertinent to this case) that when a judge is disqualified in a proceeding because "the judge's impartiality might reasonably be questioned", the judge may participate in the proceeding if all the parties and lawyers, after notice of the basis for the disqualification, agree in writing to waive the disqualification under a procedure independent of the judge's participation.

Unless a waiver is obtained from all parties and all counsel, Judge _____ intends to disqualify in this proceeding because of these circumstances:

If you and your client(s) wish to waive the judge's disqualification, letters to that effect from you and from your client(s) must be sent to me within _____ days of the date of this Notice. The letters should not be sent to the judge and copies should not be sent to other counsel. If all parties and all counsel submit such letters, this Notice and all responses will be made part of the record, as required by Canon 3D, and the judge will continue participation in the proceeding. If a waiver is not received from all parties and all counsel, this Notice and any responses will be kept under seal by the clerk and not shown to the judge, nor will the judge be informed of the identity of any party or lawyer who declined to waive the disqualification. If the disqualification is not waived, the case will be reassigned to another judge.

Frequently Asked Questions

The magistrate judges in this district can try any civil case upon consent of the parties and order the entry of final judgment. There is no "magistrate court." Both district judges and magistrate judges preside in United States district courts created under Article III of the Constitution.

Answers to Some Commonly Asked Questions

Q. What's the difference between district and magistrate judges?

A. District judges are life-tenured judges nominated by the President and confirmed by the Senate. Magistrate judges are fixed-term judges appointed by district judges for eight-year renewable terms via a merit selection process.

Q. How do civil litigants request trials before magistrate judges?

A. All parties must consent in writing and the case must be officially transferred by the district judge. Forms are available on line and from the Clerk of Court.

Q. Are a party's rights affected when litigants consent to have a magistrate judge hear a case?

A. Consenting to jurisdiction of a magistrate judge does not eliminate substantive or procedural rights litigants would otherwise have before a district judge. For example, parties retain their right to a jury trial.

Q. Do magistrate judges handle many civil jury cases?

A. Yes. In 1999, magistrate judges conducted approximately 21 per cent of the civil jury trials in United States district courts. When all parties consent, magistrate judges may conduct trials and enter judgments in civil cases of any type or size.

Q. Do magistrate judges handle many criminal cases?

A. Yes. With consent of defendants, magistrate judges may preside in Class A misdemeanor cases, including conducting jury trials. In 1999, magistrate judges terminated 10,733 Class A misdemeanor cases. Although magistrate judges do not preside at felony trials, they may conduct preliminary and post-conviction proceedings in felony cases. Magistrate judges may conduct trials and dispose of all petty offense cases.

The Role of Magistrate Judges

United States Magistrate Judges are generalist judges with a broad range of responsibilities. While their duties may vary with the specific needs of each district court, Magistrate Judges handle a wide array of federal civil and criminal cases nationwide.

A sampling of the judicial functions performed by Magistrate Judges demonstrates the potential breadth of their authority:

- Presiding at criminal misdemeanor jury trials by consent of the parties and entering judgments;
- Presiding at criminal misdemeanor jury trials by consent of the parties and imposing sentences;
- Pretrial case management in complex civil cases;
- Conducting preliminary proceedings in all criminal cases;
- Conducting settlement conferences;
- Hearing and determining pretrial motions;
- Hearing and recommending disposition of summary judgment and other case-dispositive motions;
- Reviewing prisoner suits collaterally attacking convictions or complaining of conditions of confinement; and
- Issuing arrest and search warrants.

Title and Manner of Addressing a United States Magistrate Judge

- The official title of these judges is "United States Magistrate Judge."
- A United States Magistrate should be addressed orally and in writing, as "Judge _____," to be consistent with the position's judicial role and official title as prescribed by law.
- Although some state courts have a judicial officer called a "magistrate," that title as applied to a United States Magistrate Judge is obsolete. To address these judges simply as "Magistrate" is akin to improperly addressing a Lieutenant Colonel as "Lieutenant," or a Bankruptcy Judge as "Bankruptcy."

[Notice and Availability of a United States Magistrate Judge to Exercise Jurisdiction](#)

Criminal Matters

Entry of a Guilty Plea

In the event a Defendant decides at any time before trial to enter a plea of guilty, a United States Magistrate Judge is authorized by 28 U.S.C. §636(b)(3) and SDIL 72.1(b)(2), with the consent of the Defendant and the United States of America, to conduct the proceedings required by Federal Rule of Criminal Procedure 11 incident to the plea. If, after conducting such proceedings, the Magistrate Judge recommends that the plea of guilty be accepted, a presentence investigation and report will be ordered pursuant to Federal Rule of Criminal Procedure 32. The assigned U.S. District Judge will then act on the Magistrate Judge's Report and Recommendation; and, if the plea of guilty is accepted, will adjudicate guilt, decide whether to accept or reject any associated pleas agreement, and will impose sentence. The consent forms that the parties are to submit to the Court are attached hereto. [\[Consent Form\]](#) The parties are instructed to contact the chambers main line **(618-482-9006)** to schedule change of plea proceedings.